

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE 1998

BEFORE :

THE HON'BLE MR.JUSTICE TIRATH S.THAKUR

WRIT PETITION Nos.7773-77/1992.

BETWEEN :-

Shri.C.M.Ganapathy,
s/o late C.A.Mandanna,
aged about 52 years,
Horur Mutt & Udaya Estate,
"Giri Kunja",
Near Raja Seat,
MADIKERI - 571 201
Kodagu Dist.

...Petitioner.

(By Sri.K.A.Hemraj, Adv.,)

A N D :

The Agricultural Income-tax,
Officer,
Madikeri - 571 201,
Kodagu Dist.

...Respondent.

(By Sri.K.M.Shivayogiswamy,HCGP,for Respt.)

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This writ petition filed praying to call for record vide Annexures-C to G dated 7-9-1991 bearing Nos.133/84-85, 133/85-86, 41/86-87, 41/87-88 and 41/88 passed by the Respondent for the assessment years 1984-85 to 1988-89; etc.,

This writ petition coming on for hearing this day, the Court made the following order :

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O R D E R

For the assessment years 1984-85 to 1988-89 the petitioner filed returns under the Agricultural Income-tax Act in the status of "HUF". Assessment on the basis of these returns were completed under Sec.19(3) of the Act. Some time later the Assessing Authority issued notices asking the petitioner to show-cause why a penalty in terms of Sec.18(2)(1A)(b) of the Act be not levied upon him. The petitioner's case is that in response to the Notices he appeared before the Assessing Officer and explained his position but before any final orders could be issued on the basis of the said Notices the Officer concerned was transferred to be succeeded by another incumbent who issued a fresh and composite proposition Notice for the levy of penalty on the 11th of October, 1990.

2. The petitioner it is not in dispute filed his objections to the said Notice on 20th of October, 1990. Nearly a year later the respondent has passed the impugned orders levying penalty, aggrieved whereof, the petitioner has filed the present writ petitions.

3. Mr. Hemraj, learned Counsel for the petitioner made

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ANOTHER / ITR 157 Page-1/.

4. A reading of the orders under challenge shows that the same proceed on the assumption that the petitioner had not responded to the show-cause notices served upon him. As a matter of fact the impugned orders do not even refer to the notice dated the 11th of October, 1990 issued to the petitioner to which the petitioner had admittedly filed his objections on the 20th of October, 1990. The Respondent has referred to the earlier notices issued to the petitioner and concluded that since the petitioner had not submitted any reply to the same he had possibly no explanation to offer.

The Officer appears to have over-looked the fact that the issue of the previous notices had paled into insignificance in the light of the subsequent notice served upon the petitioner to which the petitioner had submitted a reply. He was therefore duty bound to have considered the reply submitted by the petitioner to the said subsequent notice. In having failed to do so, the Officer committed an error which renders the orders passed by him unsustainable. Not only that the impugned orders give an impression as though the Officer has levied penalty without having regard to the provisions of Sec.18(2A)(b) of the Act and without considering the question whether such a penalty was at all necessary. The decision of this Court in M.P.LAXMAN's Case, (Supra) relied upon by Mr Hemraj, supports his submission that the factors or reasons on which the assessment was completed and the liability for payment of a higher tax amount determined may not by themselves be enough to attract the levy of penalty. The assessing Officer is bound to consider the cause shown by the Assessee if any and decide the question of levy of penalty without being unduly bound by the Assessment made by him. The said assessment is binding upon the Officer only to the extent

of the difference in tax levied by him. The power of imposing penalty must be exercised judiciously having due regard to the facts and circumstances of each case and not mechanically. In the instant case apart from the assumption that the petitioner had not filed any reply to the proposition notice, there is no other consideration discernible from the orders under challenge. The petitioner has therefore justified in contending that the orders are to a large extent made mechanically without a serious consideration of the question whether any such penalty was at all warranted in the circumstances.

5. In the result these petitions succeed and are hereby allowed. The impugned orders of penalty shall stand quashed, reserving liberty for the Respondent to pass fresh orders in accordance with law keeping in view the decision of this Court in M.P.LAXMAN's Case and the observations made hereinabove. The petitioner may if so advised file additional objections to the proposition notices within six weeks from today. No costs.

Ahid/-
Jan/-



Sd/-
JUDGE